

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDREW ST. LEDGER MONAGHAN, III,

No. C 11-3278 CW

Plaintiff,

v.

LARRY P FIDDLER, ALLEN JACKSON, and
RICKY KYLE,

Defendants.

ORDER GRANTING
PLAINTIFF'S
APPLICATION TO
PROCEED IN FORMA
PAUPERIS AND
DISMISSING
COMPLAINT

_____ /

Plaintiff Andrew St. Ledger Monaghan, III, files an application for leave to proceed in forma pauperis (IFP). The matter was decided on the papers. Having considered all of the papers filed by Plaintiff, the Court GRANTS the application to proceed IFP and dismisses the complaint.

DISCUSSION

A court may authorize a plaintiff to prosecute an action in federal court without prepayment of fees or security if the plaintiff submits an affidavit showing that he or she is unable to pay such fees or provide such security. See 28 U.S.C. § 1915(a). Plaintiff has submitted the required documentation, and it is evident from his application that his assets and income are insufficient to enable him to prosecute the action. Accordingly, his application to proceed without the payment of the filing fee is GRANTED.

1 The Court's grant of Plaintiff's application to proceed IFP,
2 however, does not mean that he may continue to prosecute his
3 complaint. A court is under a continuing duty to dismiss a case
4 filed without the payment of the filing fee whenever it determines
5 that the action "(i) is frivolous or malicious; (ii) fails to state
6 a claim on which relief may be granted; or (iii) seeks monetary
7 relief against a defendant who is immune from such relief." 28
8 U.S.C. § 1915(e)(2)(B)(i)-(iii). Because a dismissal pursuant to
9 § 1915(e)(2)(B) is not a dismissal on the merits, but rather an
10 exercise of the court's discretion under the IFP statute, the
11 dismissal does not prejudice the filing of a paid complaint making
12 the same allegations. Denton v. Hernandez, 504 U.S. 25, 32 (1992).

13 Plaintiff alleges that he was a witness to a murder in Sherman
14 Oaks, California, that the wrong person was charged with the crime,
15 and that he was not allowed to testify at the trial to exonerate
16 the defendant, who was wrongly convicted. The trial took place in
17 Los Angeles, California. Sherman Oaks and Los Angeles are located
18 in the Central District of California.

19 Plaintiff sues the trial court judge, a sheriff's officer and
20 the prosecutor for having him improperly removed from the
21 courtroom. Plaintiff also indicates that he brought the same case
22 against the same Defendants in the United States District Court for
23 the Central District of California, case number C 09-5698 DOC-E,
24 which was dismissed without prejudice on January 25, 2010. On
25 February 19, 2010, Plaintiff filed an appeal in the Ninth Circuit,
26 which was dismissed for failure to prosecute on April 14, 2010.
27 Plaintiff also filed a case against Defendants in the Eastern
28

1 District of Pennsylvania, case number 10-cv-2834-JF. He apparently
2 voluntarily dismissed that case.

3 Plaintiff may not keep filing the same lawsuit against the
4 same Defendants in different venues. Therefore, this case is
5 dismissed as duplicative of the previous cases Plaintiff filed.
6 Furthermore, because the events which gave rise to this action and
7 the parties involved reside in the Central District of California,
8 venue is improper in the Northern District. See 28 U.S.C.
9 § 1391(b).

10 Therefore this complaint is dismissed.

11 CONCLUSION

12 For the reasons stated above, Plaintiff's application to
13 proceed IFP is GRANTED and his complaint is DISMISSED without
14 prejudice to re-filing in federal court with the full filing fee.

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16 IT IS SO ORDERED.

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18 Dated: 10/19/2011



19 CLAUDIA WILKEN
20 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MONAGHAN et al,

Case Number: CV11-03278 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

FIDDLER et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 19, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Andrew St. Ledger Monaghan
503 Olympic Boulevard
Santa Monica, CA 90401

Dated: October 19, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California